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No. 344.

Motion to advance.

Filed Nov. 14, 1898.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

FRED STEARNS, AS COUNTY AUDITOR OF AITKIN COUNTY, MINNESOTA,
Plaintiff in Error,
vs.
THE STATE OF MINNESOTA, ON THE RELATION OF JAMES N. MARR,
Defendant in Error.

No. 344.

Writ of Error to Supreme Court of State of Minnesota.

MOTION TO ADVANCE.

Now comes the parties above named, plaintiff in error, by C. W. Bunn and Emerson Hadley, his counsel, and the defendant in error, by H. W. Childs, Attorney General of the State of Minnesota, and A. Y. Merrill, his counsel, and move the Court to advance this cause and set the same down for argument at as early a day as will suit the convenience of the Court.

The following is a brief statement of the matter involved in this suit and reasons for the application.

This proceeding was commenced in the District Court of the State of Minnesota, of the Fifteenth Judicial District, in 1897, to compel the plaintiff in error, Auditor of Aitkin County, to place certain parcels of land upon the tax rolls of the county for that year. One parcel of land belonged to the land grant of the Saint Paul and Duluth Railroad Company, one to the land grant of the Northern Pacific Railroad Company, and one parcel belonged to the Great Northern Railway Company. The defendant in error claimed that the said lands were taxable by virtue of the provisions of Chapter 168, of the General Laws of Minnesota, of the year 1895, providing for the taxation of lands granted to railroads. The plaintiff in error claimed that the law was not properly enacted and further that the lands granted to the Saint Paul and Duluth Railroad Company, formerly the Lake Superior and Mississippi Railroad Company, were not subject to ordinary taxation for the reason that the railroad had an irrevocable contract with the State that in consideration of the railroad Company paying a gross earnings tax such lands should not be taxed until sold by the Railroad Cnmpany by virtue of Chapter 8, Special Laws of Minnesota of 1865, and that the Northern Pacific Railroad Company had a similar irrevocable contract by virtue of Chapter 65, of the Special Laws of Minnesota of the year 1870, and that any repeal of said laws without consent of the railroad companies would be contrary to the provisions of the Constitution of the United States. The defendant in error claimed that said laws were not irrepealable contracts and that the act of 1895 repealed them. The court held that the law of 1895 was valid and that the lands were properly taxable, and ordered them put on the tax rolls. On appeal

to the Supreme Court of the state, the decision of the lower court was affirmed, and a writ of error was taken from this court.

This case thus involves the taxability of all the unsold granted lands of the Saint Paul and Duluth Railroad Company, formerly the Lake Superior and Mississippi Railroad Company, and of the Northern Pacific Railroad Company. These granted lands of the Saint Paul and Duluth Railroad Company, at the commencement of this proceeding, amounted to about nine hundred and seventy thousand (970,000) acres, and those of the Northern Pacific Railroad Company in Minnesota to about five hundred and sixty thousand (560,000) acres. These lands have been taxed in the various counties where they are situated for the years 1897 and 1898, but the railroad companies owning the lands have refused to pay such taxes until the validity of the law under which they are taxed is adjudged by this court, and both the state and railroad companies are desirous of an early determination of the questions in issue. These lands are situated in many counties in the State of Minnesota, and the revenue of some of those counties is greatly impaired by reason of the failure of the companies to pay the taxes on said land, and it is of great importance to these counties and to the state to have the validity of the law in question finally adjudicated by this court so that the revenues of these counties may be regulated accordingly.

Another year's taxes will be levied in June and July, of 1899, and it is also important that the taxability of the lands in question be determined before that time, so that the rate of taxation in the counties where there are large quantities of these lands may be so fixed that it will produce sufficient and no more than sufficient revenue to pay the running expenses of said counties.

The amount of taxes assessed on the granted lands of the Saint Paul and Duluth Railroad Company for the year 1897, in the various counties where said lands are situated, was as follows: Pine, $17,984.93; St. Louis, $12,415.41; Carlton, $9,498.36; Benton, $204.76; Aitkin, $6,080.03; Anoka, $62.37; Chisago, $86.88; Cook, (about) $400.00; Crow Wing, $2,115.41; Isanti, $459.51; Itaska, $256.99; Kanabec, $3,922.06; Lake, $364.12; Mille Lacs, $1,808.13; Morrison, $1,815.23; Sherburne, $104.93. The amount of taxes assessed against granted lands of the Northern Pacific Railroad Company for 1897, in the various counties where said lands are situated, was as follows: Aitkin, $3,302.76; Becker, $3,245.31; Cass, $3,370.48; Clay, $2,484,64; Crow Wing, $3,574.32; Hubbard, $915.88; Itaska, $593,87; Morrison, $253.62; Mille Lacs, $32.69; Norman, $1,324.49; Otter Tail, $2,542.43; Pine, $9.69; St. Louis, $1,378.69; Todd, $1,400.41; Wadena, $2,877.66; Wilkin, $94.48.

In many of these counties the total amount of taxable property is comparatively small, and the question whether these granted lands belonging to the Saint Paul and Duluth Railroad Company and the Northern Pacific Railroad Company are taxable has an important bearing in determining the rate of taxation and the revenues of those counties.

The amount of taxes on these lands of the Saint Paul and Duluth Railroad Company and the Northern Pacific Railroad Company for the year 1897, which have not been paid and payment thereof is awaiting the determination of this action, is about eighty-five thousand dollars ($85,000) and the the taxes of 1898, amounting to about as much more, will be due and payable January 1st, 1899.

The railroad companies interested are also desirous of an early determination of the validity of the taxes in

question, for the reason that if the taxes are invalid they are a cloud on their title and hinder sales of their lands, and if they are valid taxes they desire to pay them and avoid the penalties and high rate of interest for which they will be liable for non-payment.

Dated Oct. 31st, 1898.

C. W. BUNN and
EMERSON HADLEY,
Counsel for Plaintiff in Error.

H. W. CHILDS, Attorney General and
A. Y. MERRILL,
Counsel for Defendant in Error.